1885.
95?

SUPREME COURT OF THE UNITED STATES.

No. 112.

RICHARD KING & DANIEL W. COXE, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT U. S. FOR LOUISIANA.

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J. & G. S. GIDEON, printers.

UNITED STATES CIRCUIT COURT,
Fifth circuit and district of Louisiana:

Be it remembered that on the 9th day of May, 1845, the following mandate was filed in this office:

Mandate.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the honorable the judges of the circuit court of the United States for the eastern district of Louisiana, greeting:

Whereas lately, in the circuit court of the United States for the eastern district of Louisiana, before you, or some of you, in a cause between the United States, plaintiffs, and Richard King and Daniel W. Coxe, defendants, the judgment of the said circuit court was in the following words, viz: "The court having maturely considered the law and the evidence in this case, doth now order, adjudge, and decree, that the plaintiffs' petition be dismissed, and that the grant made by the Baron de Carondelet, as the governor of Louisiana, on the 20th June, 1797, to the Marquis de Maison Rouge, be and the same is hereby declared valid; that the said Richard King, and the said Daniel W. Coxe, warrantor, be and they are hereby declared and recognised to be the lawful owners of the parts of the said grant held by them, as described in the answer of the said Richard King, and in the schedule "A," and that they be quieted in the ownership and possession of the same."

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States, by virtue of a writ of error agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and forty-four, the said cause came to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel; on consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby, remanded to the said circuit court for further proceedings to be had therein, in conformity to the opinion of this court, and as to law and justice may appertain.

5th March, 1845.

You therefore are hereby commanded, that such further proceedings be had in said cause, in conformity to the judgment and opinion of this court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and forty-four.

(Signed) WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

The following entry was made on the minutes:

Friday, May 9th, 1845.

UNITED STATES, vs. KING ET AL. } No. 1070.

S. W. Downs, esq., district attorney, on reading the mandate from the Supreme Court of the United States, moved the court that this case be taken up for final decision. L. Janin, esq., appearing for the defendants, moved for a new trial; and after argument the court ordered that defendants' counsel should submit a statement of what was proved on the former trial, and not sent up or certified to the Supreme Court, and what additional matter he expected to prove in case of a new trial. And the court further ordered that said cause should be fixed for hearing on Tuesday next.

Affidavit of L. Janin, filed 13th May, 1845.

THE UNITED STATES, vs. RD. KING: D. W. Coxe called in warranty. } No. 1070.

Ls. Janin, of counsel for the defendant and warrantor, moves the court to order that this case be again put upon the issue docket, and that the same be tried by a jury, inasmuch as the mandate of the Supreme Court of the United States, recorded on the 9th instant in this court, is analogous and equivalent to a venire facias de novo, and that by the practice of this court either party has the right of claiming a jury in trials at law.

Louis Janin being duly sworn deposeth, that he is counsel for D. W. Coxe in the above suit, and the only counsel employed in the defence of said suit in the circuit court; the defendant King having consented to leave to his warrantor Coxe the entire management of the case. Affiant further saith that, having made a motion on the 9th instant, to the effect that this case be tried de novo, which motion he now has expressed in the words appearing at the head of the affidavit, and having addressed an argument to the court in support of said motion, the court directed him to state concisely, in a brief, the matters which had been proved at the trial of this case in the circuit court by oral testimony, and had not been taken down in writing; as also the matters which, in the event of a new trial, he expected to prove. That thereupon the affiant requested the court to be permitted to make said statement under oath.

And said request having been granted, and the presiding judge of this court having desired, with a view of obtaining a full insight into the mer-

its of the application, to be informed of the manner in which this case was conducted in this court, the affiant deposeth, that previous to the trial thereof he wrote to R. S. Coxe, esq., of Washington city, who was employed to try said case for the defendants in the Supreme Court, that this case was a petitory action, and therefore a suit at law; that under the decision of the Supreme Court of the United States, in the case of Parsons vs. Bedford, 3 Peters, 433, the oral testimony received at the trial of such cases was not permitted to be taken down in writing; that such had always been the practice of the federal court in New Orleans; that from the judgment of the circuit court in said case, a writ of error and not an appeal would lie; that the Supreme Court would therefore not reinvestigate the facts; that under the practice of the said circuit court, either party had a right to call for a jury; but that if neither did so, the whole case was to be decided by the court, and that then the finding of the facts by the court would be considered by the Supreme Court as equivalent to a special verdict; that having requested the said R. S. Coxe to express his views on this subject, the said Coxe replied, that he was inclined to agree with the affiant; and that thereupon the affiant prepared and conducted this case under the persuasion that the facts of this case would not be reviewed by the Supreme Court, except so far as they might be brought up by bills of exception, a special verdict, or an agreed case; that therefore the oral testimony could not be taken down in writing, and that it would be sufficient to satisfy the circuit court of the correctness of the facts relied on by the defence.

Affiant further sheweth, that on 1st June, 1843, the said D. W. Coxe, for the purpose of expediting the trial of this case, made an agreement with the district attorney, (p. 79 of the printed record,) by which he admitted certain ex parte evidence, procured and printed by J. F. Girod in the year 1820; that in said testimony it is intimated that an important document relied on by the defence, to wit, a plan and certificate made by Laveau Trudeau, dated the 14th of June, 1797, was antedated, and was in reality only made in 1802, and that in said document Laveau Trudeau pretended to have surveyed said land for Maison Rouge, whereas he had never been in Ouachita; that with a view of rebutting said testimony the affiant exhibited both written and oral testimony; that by referring to the fee book of the clerk of this court, under date of the 1st of July, 1843, it will appear that 6 summons were on that day issued for witnesses; that on the 3rd of July the affiant made the following motion, which is in the minutes of this court, to wit:

"On motion of Ls. Janin, esq., of counsel for D. W. Coxe, it is ordered, that Ls. Bringier, the surveyor general of the State of La., bring into court on Wednesday, the 5th of July instant, at 10 o'clock A. M., the plan of the grant to the Marquis de Maison Rouge, said plan and the accompanying certificate being made by Carlos Trudeau, late surveyor general of the province of La., and dated the 14th of June, 1797."

That from other entries in the fee book it is shewn that 6 witnesses were summoned on the 1st of July; that on the 3rd July 7 witnesses

were sworn; and that on the same day two attachments were issued for witnesses; that in the book kept by the clerk, in which counsel register the names of the witnesses to be summoned, is the following entry, in the handwriting of the affiant:

Witnesses for defendants and warrantors.

UNITED STATES, }
vs. }
KING. }

Antoine Cruzat, Joseph Pelié, A. S. Phelps, Peter Laidlaw, Denis Prieur, Beverly Chew, Hy. A. Bullard, F. X. Martin.

That across this list of witnesses is written, in the handwriting of H. B. Page, who was then the deputy clerk of this court, "Issued, and charged in mem., July 3, '43;" that the affiant verily believes that at the trial most of the aforesaid witnesses were present; that besides them Louis Bouligny, Louis Bringier, and perhaps also Judge Benjamin Winchester and D. Morphy were present; that the deposition of Louis Bouligny was offered but rejected by the court, and that a bill of exceptions was taken by the defendant, (p. 40.)

And the affiant further deposeth, that a certain number of the aforesaid witnesses were examined at said trial; that affiant distinctly recollects having examined them concerning the official and private character of Carlos Laveau Trudeau, the credit deserved by his official acts, and the purchase of the papers left at his decease by the State of Louisiana in the year 1817, since when they have formed part of the archives of the State; and he further recollects that it was proved by said witnesses that the said plan of June 14th, 1797, was not, as pretended by the witnesses produced by J. F. Girod, an actual survey, but a sketch, or what Spanish surveyors called a "plano figurativo," that is, a general outline of a large tract of land sketched on a map of the country, and intended for a guide to a subsequent survey, analogous to the entries known in the other States of the Union; that such "planos figurativos" were by no means uncommon in the Spanish times; that any one in the slightest degree acquainted with Laveau Trudeau's numerous surveys, still extant, would immediately recognise this plan as not intended by him for a survey; that the mistake of J. F. Girod, and his witnesses probably originated in an erroneous translation of Laveau Trudeau's certificate appended to his said plan; that said translation was made by L. Chacheré, the translator to the Board of Commissioners of the western district of Louisiana, in the year 1812, and is printed in Girod's pamphlet, (p. 106 of the record); that said erroneous translation commences thus: "Carlos Trudeau, surveyor general, La., certifies to have *measured*, in favor of Marquis of Maison Rouge," &c., &c.; whereas in the Spanish original no word corresponding to the word "measuring," or implying in the remotest manner an actual operation on the ground, is to be found.

And the affiant further sheweth, that it is at present impossible for him to state which or how many of said witnesses were examined concern-

ing said particular facts; that his recollections *is* the less distinct, because on these points he did not press the testimony any farther, as soon as he felt assured that the district judge, who alone presided at the trial, was convinced of the truth of the said statement; that the said district judge being extremely familiar with the colonial titles of Louisiana and their history, the affiant considered that he was no doubt acquainted with the unsullied character of Laveau Trudeau, as also with the usual form of his official operations, and that therefore less copious testimony would appear sufficient to said judge, than would have been procured if the affiant had entertained the belief that the Supreme Court would enquire into these facts.

And the affiant further deposeth, that owing to the above expressed view entertained of the practice of this court in cases at law, no part of the said oral testimony was reduced to writing, and he further sheweth that all the aforesaid witnesses are still alive, and reside and are now in the city of New Orleans; that with the exception of Denis Prieur, Peter Laidlaw, Beverly Chew, and D. Morphy, whom the affiant had cited to prove other matters, all of them will undoubtedly, in the affiant's opinion, confirm the foregoing statements concerning the character of said Laveau Trudeau, and the true purport of said documents of June 17th, 1797; and the affiant prays that, if in the opinion of the court it should be meet and proper for the furtherance of justice, they may be examined on the said points when and wherever the court may direct.

And the affiant further deposeth, that if this case be tried de novo, he verily believes that the defendants will be able to prove in a conclusive manner that Carlos Laveau Trudeau was not only a very competent public officer, but a man of great private worth and purity of life; that he was, during nearly 23 years, and up to the cession of Louisiana, the surveyor general of the province of Louisiana; that afterwards he was elected recorder of New Orleans; that he died about 1816, being then perhaps still recorder, (of which latter fact the affiant is however not quite positive); that he enjoyed, before and after the cession of Louisiana, the esteem and confidence of his fellow citizens in the highest degree; that with the means of securing to himself and his family a large fortune, he lived and died in extremely moderate circumstances; that his official acts are the foundation of, or at least important links in the titles of many of the most valuable properties in Louisiana; that after his death the legislature of Louisiana purchased for $6,000 all his papers, (see act of the legislature, of Feb. 22nd, 1817,) which were first deposited in the office of the secretary of State, and afterwards in the office of the surveyor general of the State, (act of the legislature, of March 18th, 1818;) that in a very large number of suits about real estate in the courts of the State of Louisiana, Laveau Trudeau's surveys, plans, and certificates have been discussed and scrutinized; and that in no instance was his integrity, purity, or disinterestedness ever questioned.

That up to the year 1798, when the power of granting land was taken from the governor and vested in the intendant of the province, a survey was not necessarily preliminary to a grant of land, and that an ex-

tremely large number of claims have been confirmed by the United States which never were surveyed under the Spanish government.

That the mode of granting lands in Louisiana was quite different from that prevalent in Florida, which was first introduced by the regulations of intendants Morales; that it was altogether dissimilar to that prevailing in other Spanish colonies; that it was established by the French government of Louisiana, and maintained by Spain as she found it, when she acquired the colony; that this whole subject is not governed by written laws, but by colonial customs, the evidence of which is to be found in the often repeated and long and uniformly continued acts of the colonial government; and that these acts were perhaps never disavowed by the home government.

That the Spanish government of Louisiana was not a corrupt or venal government; that the province of Louisiana, far from being profitable, was a source of constant expense to Spain, and cherished only for political considerations; that Louisiana was governed with peculiar and truly patriarchal lenity and justice; that bribery in the higher offices of the government, and fraud in land matters, are unknown in the history of Spanish Louisiana; that Baron Carondelet was a man of high character, and greatly in the confidence of his sovereign; that the Spanish government generally granted lands with much facility and liberality, and without much regard to strict forms, and that this was particularly the case during the latter part of Carondelet's administration, owing to political reasons, susceptible of explanation at the proper time.

The affiant further expects to show, that the frauds by which the confirmation of pretended Spanish grants in Louisiana was obtained, or at least sought, have all been committed since the cession of Louisiana, and are principally attributable to the incompetency of some, and the connivance and participation of other persons, who have at various times been officers of the land offices of the United States in Louisiana.

The affiant further showeth, that he intends to apply in the name of said D. W. Coxe to this court, or to the chancery side of this court, to relieve said Coxe from the agreement entered into by him as aforesaid on the 1st of June, 1843, by which said testimony, impeaching the plan and certificate of Laveau Trudeau, was admitted, which consent was made under the following circumstances, to wit: That at the instance of the said D. W. Coxe the President directed the district attorney of the United States to bring a suit for the purpose of testing and settling the title to the land claimed under the Maison Rouge grant; that immediately thereafter the said D. W. Coxe, who resides in the city of Philadelphia arrived at New Orleans; that he laid before the said district attorney all the information in his possession concerning said tract, including the pamphlet of J. F. Girod, and the aforesaid evidence; that thereupon this suit was instituted on the 13th of Feb., 1843; that the said Coxe remained in New Orleans under the expectation that said suit would be tried; that towards the latter part of May, 1843, the said district attorney peremptorily refused to try said case until he should have had more time to collect whatever legal evidence might be in existence in opposition to

the claim, and particularly in support of the charges contained in the aforesaid pamphlet; that said D. W. Coxe was then 72 or 74 years of age, and away from his home and business; that the season was approaching which in New Orleans is uncongenial to persons not enured to the climate; that the said Coxe became profoundly discouraged, as he saw before him the certainty of a further delay of years before he could expect the settlement of this matter, which, since the year 1819, had been the subject of his unremitting efforts; that under this state of feelings he proposed to said district attorney to submit to almost any terms, provided the said case could be tried during that season; that thereupon the said district attorney drew up, and the said Coxe signed, said agreement of June 1st, 1843, by which, while the United States made no concession whatever, the said Coxe agreed to admit said Girod's testimony, without objection either as to form or substance; as also any other matters relating to said Maison Rouge grant, though not possessing the form or the character of legal evidence, which might at any time have been alleged or presented to Congress, or in any judicial proceedings; that this consent was given under the expectation, and for the reason, that it would lead in the final disposal of said case, in which expectation the said Coxe is now disappointed, and that if this case is tried de novo, and the aforesaid consent is permitted to be withdrawn, the United States will have the same opportunity which they had in 1843 of insisting on the admissibility of said testimony, or of proving the matters therein stated.

And the affiant further sheweth, that the aforesaid consents were made by him under the instructions of said D. W. Coxe, though contrary to affiant's opinion; and the affiant further adds, that he does not wish to be understood as implying that the said D. W. Coxe has the least ground of complaint against said district attorney, and that, on the contrary, it was said Coxe who pressed the trial of this case.

And the affiant further sheweth, that if said consent be withdrawn he expects to shew that the proceedings under which the said testimony was taken is null and void by the law of Louisiana; that it cannot bind said Coxe, because they were carried without his knowledge, and without his having been cited; and that the citation addressed to Hy. Bry does not bind said Coxe, because said Hy. Bry had not the power of attorney of said Coxe, and was not authorized to represent him in any judicial proceedings.

And the affiant further sheweth, that he has been informed, since the late decision of the Supreme Court, by the said Hy. Bry, who is an old and respectable inhabitant of the parish of Ouachita, that as soon as he received the citation in the above mentioned proceedings, he replied in writing that not being authorized to represent the said Coxe and Turner in said proceedings, he declined to take cognizance therefor to appear for said parties, and that he placed said answer on record, where he presumes the same still is.

And the affiant further sheweth, that he had no knowledge whatever of this fact until he was informed of it as aforesaid by said Bry; and

that in the copy of the said proceedings printed as an appendix to the pamphlet of said Girod, and introduced as evidence in this case, the answer of said Bry is not copied.

And the affiant further expects to prove, that said testimony is untrue in many and essential particulars concerning which the witnesses from their situation and opportunities must have had better information than they were willing to impart; that the statements of the said J. F. Girod and of two of the witnesses were in a great measure based upon the supposed discovery that Laveau Trudeau had given a certificate declaring that he had *surveyed* said lands for Maison Rouge; that several of said witnesses had a direct interest in conflict with the Maison Rouge claim, and that if it be true as stated by the witness McLaughlin, that several old inhabitants of Ouachita, after the cession of Louisiana, had fabricated sales of lands never granted by the Spanish government, it seems highly probable that Filhiol, one of said witnesses, was one of them, from authentic documents in the affiant's possession, which he is ready to produce.

And the affiant sheweth, that the merits of the Maison Rouge grant must necessarily be investigated anew, inasmuch as the said D. W. Coxe, and the heirs of Turner, have sold a great and very valuable part of the said grant to many persons, some of whom have for a considerable number of years kept possession of, and improved the land so purchased by them; that said heirs of Henry Turner and purchasers, are not affected by the decision made, or to be made in the present suit; and that they intend to bring suit for the confirmation of their said land to the district court of the United States for the district of Louisiana, under the act of Congress of June 17, 1844.

And finally, the affiant sheweth, that he expects to prove by Louis Bouligny, the person who is charged with having induced said Carlos Laveau Trudeau to antedate the above mentioned plano figurativo, that no part of said charges has the slightest foundation in truth; and that said document was found in the trunk of said Marquis de Maison Rouge, after his death in 1799.

(Sig'd) LS. JANIN.

Sworn to and subscribed before me, New Orleans, May 13th, 1845.

For D. N. HENNEN, *Clerk*.

(Sig'd) J. McCULLOCH, *D'y cl'k*.

Judgment.

Saturday, May 17th, 1845.

The court met pursuant to adjournment. Present: the hon. John McKinley, presiding judge; the hon. Theodore H. McCaleb, district judge.

UNITED STATES vs. RICHARD KING. } No. 1070.

The opinion and mandate of the Supreme Court having been filed [REC. CXII, D. T. 1845.]—2.

in this cause, and the motion of the defendant and warrantor that the case should be again set down on the issue docket, and that a trial *de novo* take place having been overruled, the court proceeding to enter up judgment in conformity with the opinion and mandate of the Supreme Court, doth now order, adjudge, and decree, that the plaintiff recover of the defendant and warrantor a certain tract or parcel of land situated in the parish of Caldwell, State of Louisiana, on the west bank of the Ouachita river, in township 14, range three east, in the district north of Red river, having a front on said Ouachita river of about one mile, and the depth of about five miles and a half, being that part of lot No. 19, as laid off by the survey of Dinsmore, which lies on the right bank of the river descending as described in the petition, and all the land mentioned and described in the schedule A, annexed to the answer of Coxe; that they be put in possession of, and quieted in, their title to the same; that the title of the said Coxe to the Maison Rouge claim, as set forth in his answer and the annexed schedule A, is invalid, null and void; and that the defendant and warrantor pay the costs in both courts.

Judgment rendered, May 17th, 1845.

Judgment signed, May 20th, 1845.

(Sig'd) J. McKINLEY.

Bill of exceptions, filed 17th May, 1845.

UNITED STATES vs. KING & COXE. } No. 1070.

Be it remembered, that after the filing of the mandate of the Supreme Court in this case, to wit, on the inst., the counsel for the defendants, King and Coxe, moved the court to order this case to be again put upon the issue docket, and to be tried de novo, and by a jury; in support of which motion the said counsel filed his affidavit on the instant, which is a part of this bill of exceptions; and the said motion having been resisted by the district attorney of the United States, and having been argued, the court this day overruled the same, and on the motion of the district att'y ordered a final judgment to be entered for the plaintiff and against the def'ts. And the ground upon which this decision was made was, that this case had been remanded by the Supreme Court for further proceedings in conformity with the opinion expressed by the Supreme Court, and that said opinion was a final one against the validity of the grant, inasmuch as the Supreme Court in said opinion had declared, that if in a grant the description (of the land) was vague and indefinite as in this case, and there was no official survey to give it a certain location, it could create no right of private property in any particular parcel of land which could be maintained in a court of justice; and that in this case the location of the land was not shewn by any other evidence but the plan and certificate of Carlos Laveau Trudeau, apparently dated the 14th of June, 1797, and that this instrument was antedated and fraudulent, and must therefore be disregarded. To which decision the counsel for the def'ts, King and Coxe,

beg leave to except, and prays that this bill of exceptions may be signed, which is done accordingly.

(Sig'd) J. McKINLEY, [SEAL.]

On the 17th of May, 1845, the following petition for a writ of error was filed:

To the honorable circuit court of the United States for the fifth circuit and district of Louisiana.

The petition of Richard King and Daniel W. Coxe respectfully shows: That your hon'ble court has on this day rendered a final judgment in the suit in which the United States are plaintiffs, and your petitioner, Richard King, is defendant, and your petitioner D. W. Coxe has been called in warranty

That by said judgment your hon'ble court has refused the application of the petitioners for a new trial before a jury, and has ordered a final judgment to be entered up in favor of the United States and against these petitioners.

That your petitioners are advised that there is error in this decision.

Wherefore, they pray for a writ of error to the honorable Supreme Court of the United States, on complying with the requisites of the law.

(Sig'd) L. JANIN, *Att'y for petitioners.*

Judge's order.

Allowed, May 17th, 1845.

(Sig'd) J. McKINLEY,

Associate justice of the Supreme Court of the United States.

And on the 17th of May, 1845, the following bond for writ of error was filed:

Know all men by these presents, that we, Richard King and Daniel W. Coxe, principals, and Wm. Dunbar, as surety, are held and firmly bound unto the United States of America, in the full and just sum of five hundred dollars, to be paid to the said United States, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 17th day of May, in the year of our Lord one thousand eight hundred and forty-five.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein the United States are plaintiffs, and Richard King and D. W. Coxe, defendants, judgment was rendered against the said King and Coxe, defendants; and the said King and Coxe having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said United States, citing and admonishing them to be and appear at a Supreme Court of the

United States, to be holden at Washington, on the first Monday of December next.

Now the condition of the above obligation is such, that if the said Richard King and Daniel W. Coxe shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

RICHARD KING and
DANIEL W. COXE.

Sealed and delivered in the presence of

(Sig'd) By L. JANIN, *Att'y.* [L. S.]
" WM. DUNBAR. [L. S.]

Judge's order.

This bond is approved, May 17th, 1845.

(Sig'd) J. McKINLEY,
Associate justice of the Supreme Court of the U. S.

And on the 19th May, 1845, the following agreement of counsel was filed:

THE UNITED STATES
vs. } No. 1070.
KING & COXE.

It is agreed that the record on the writ of error granted in this suit on the 17th instant, shall be composed only of the matters subsequent to the first writ of error, to wit: the mandate of the Supreme Court, the motion of the defendants for a new trial, *the affidavit of L. Janin*, the judgment of the circuit court of the 17th instant, the bill of exceptions taken on the same day, the writ of error, the citation and the return thereon, and the bond.

It is agreed that the record of this suit already filed in the Supreme Court, may be consulted and referred to by either party at the argument before the Supreme Court.

It is agreed that no objection will be made to the bond given by the defendants on the 17th instant, on the ground that it is signed by the counsel for the defendants King and Coxe, who are absent from this city.

(Sig'd) L. JANIN, *Att'y for defendants.*
(Sig'd) S. W. DOWNS,
U. S. dis't att'y, La.

NEW ORLEANS, *May 19th*, 1845.

Clerk's office United States circuit court, district of Louisiana.

I, Duncan N. Hennen, clerk of the circuit court of the United States in and for the district of Louisiana, do hereby certify, that the foregoing 18$\frac{3}{4}$ pages contain a faithful and true transcript of the record and proceedings in the case of the United States vs. King & Coxe, No. 1070, pursuant to agreement of counsel on file in this office.

In testimony whereof I have hereunto signed my name and affixed

the seal of said court, at the city of New Orleans, this 26th day of May, A. D. 1845, and 69 year of the independence of the United States.

For DUNCAN N. HENNEN, *Clerk*.
F. McCULLOCH, *D'y clerk*.

I, Theodore H. McCaleb, judge of the district court of the United States for the district of Louisiana, and one of the judges of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify, that Duncan N. Hennen is the clerk of the circuit court of the United States, for the fifth circuit and district of Louisiana, and that F. McCulloch, who signed the foregoing certificate, is deputy clerk of said court, and was at the time of so doing, and that full faith and credit are due to his acts as such; and that the foregoing certificate is in due form of law.

Witness my hand and seal this 28th day of May, A. D. 1845.

THEO. H. McCALEB, [SEAL.]

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States and Richard King and Daniel W. Coxe, a manifest error hath happened, to the great damage of the said Richard King and Daniel W. Coxe, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States. together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable R. B. Taney, chief justice of the said Supreme Court of the United States, this 17th of May, in the year of our our Lord one thousand eight hundred and forty-five.

DUNCAN N. HENNEN,
Clerk of the United States circuit court and district of Louisiana.

Copy of the writ of error lodged in the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, in pursuance the statute in such cases made and provided, this 17th day of May, 1845.

L. JANIN,
Attorney of plaintiff in error.

Citation in error.

The United States of America, to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, wherein Richard King and Daniel W. Coxe are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this seventeenth day of May, in the year of our Lord one thousand eight hundred and forty-five.

J. McKINLEY,
Associate justice of the Supreme Court of the United States.

Marshal's return.

Rec'd 21st May, 1845, and same day served a copy of the within citation in error on S. W. Downs, esq., U. S. d't attorney, in person, in the city of New Orleans.

WM. K. STILES.

Filed, 17 July, 1845.